

**A report by the Inspector of Prisons
Judge Michael Reilly into the circumstances
surrounding the death of Prisoner C
in the Midlands Prison
on 30th January 2012**

***Please note that names have been removed to anonymise this Report**

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into the circumstances surrounding the death of Prisoner C
in the Midlands Prison on 30th January 2012**

Presented to the Minister for Justice and Equality pursuant to
Part 5 of the Prisons Act 2007

Judge Michael Reilly
Inspector of Prisons

26th August 2014

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Preface

The deceased was an 82 year old man when he died in the Midlands Prison on 30th January 2012. He came from the Munster area.

As part of my investigation I met the deceased's wife. I offer my sincere condolences to her on the death of her husband.

The deceased's wife raised many issues with me. Numbers of these issues are not relevant to my investigation. However, I have responded in this Report to the questions and issues raised by her.

My Report is divided into 9 chapters.

Matters of concern are disclosed in this Report – the most important of which is that the deceased was not granted Temporary Release prior to his death on health grounds.

I would like to point out that names have been removed to anonymise this Report.

Finally, I would like to thank all those who assisted in this investigation particularly Dr. Ide Delargy and Mr. Hugh Kane.

Judge Michael Reilly
Inspector of Prisons
26th August 2014

Chapter 1

General Principles

- 1.1 In order to place concerns expressed by the deceased's wife and my responses to same in context I wish to point to my role in the investigation of deaths of prisoners who die in the custody of the State.
- 1.2 My investigations of and reports on deaths of persons in prison custody are not and do not purport to answer all questions surrounding a death. My investigations are part of a three pronged process – the other elements being an investigation by An Garda Síochána and an investigation and an Inquest conducted by the Coroner.
- 1.3 In layman's terms my investigations seek to ascertain whether or not the prison environment, the prison conditions, the prison regimes or the actions or non actions of prison management, staff or others working within the prison system contributed in any way to the death of a prisoner.
- 1.4 In addition to the considerations set out in paragraph 1.3, I also seek to ascertain if the relevant prison complied with its own rules. Where rules are deficient I draw attention to such deficiencies in my recommendations.
- 1.5 In the instant case I received full co-operation from the prison authorities. I had unrestricted access to all reports and records kept in the prison.

Chapter 2

General Information

- 2.1 The deceased was an 82 year old married man who came from the Munster area.
- 2.2 The deceased was committed to Cork Prison on 15th October 2010. His release date was to be 14th April 2012. Prior to 15th October 2010 the deceased had no previous convictions.
- 2.3 Almost immediately after his conviction the deceased was transferred to Wheatfield Prison where he remained until 11th August 2011 when he was transferred to the Midlands Prison.
- 2.4 The deceased had serious medical issues prior to his committal to prison on 15th October 2010 and during his period in prison. I refer to these issues in Chapter 6 of this Report but will ask the Minister for Justice and Equality to redact paragraph 6.10 from the Report when same is being published. My reason for making this request is that the publication of personal medical history is not in the public interest. I am satisfied that the redaction of such information will not affect the thrust of this Report.
- 2.5 The deceased died in the Midlands Prison on 30th January 2012.

Chapter 3

Concerns of the Next of Kin

3.1 During the course of this investigation the deceased's wife, being his next of kin, was interviewed on a number of occasions. I also had correspondence with her. During the course of the interviews and in the correspondence she raised many issues with me. The issues raised can be broadly divided into three categories, namely:-

- (a) her contact with the Irish Prison Service both medical and operational – detailed in paragraph 3.2,
- (b) the care being afforded to her late husband by various hospitals during the course of his imprisonment – detailed in paragraph 3.3, and,
- (c) the reasons for the refusal by the Irish Prison Service of temporary release to the deceased due to his ill health – detailed in paragraph 3.4.

Contact with the Irish Prison Service

3.2 The deceased's wife raised many issues concerning her contact with the Irish Prison Service which included, *inter alia*, the following:-

- (a) The prison was unresponsive to the deceased's wife as she had difficulties meeting with key people.
- (b) If she complained this resulted in reduced visits.
- (c) She was not allowed accompany her late husband to hospital.
- (d) Sanitary essentials were not available at times.
- (e) The oxygen condenser did not operate in his cell – hence the need for a mobile unit.
- (f) The dietary regime did not take account of the deceased's diabetes or chemotherapy.
- (g) The deceased had no access to chiropody services.
- (h) Meal times did not take account of the deceased's diabetes.

- (i) The tuck shop did not stock goods suitable for diabetics.
- (j) No appropriate care or suitable food available to the deceased during periods of lock down at night.
- (k) An allegation that three prison officers had verbally abused the deceased's wife and that this was not investigated despite an allegation that CCTV footage supported the allegation.
- (l) The deceased's wife was restricted to a screened visit as she was told that the drug dog had indicated positively.

Care afforded to the deceased by hospitals

3.3 The deceased's wife raised issues concerning the treatment of her husband in various hospitals which included, *inter alia*, the following:-

- (a) A Consultant in the Limerick Regional Hospital alleged to have stated that "*treatment needed to begin earlier for better outcomes*".
- (b) Tallaght Hospital "*would not discuss the patient as he was in custody*".
- (c) Medical information and diagnostic information was not transferred between the following Hospitals – Limerick Regional Hospital, Tallaght Hospital, Kerry General Hospital and Portlaoise General Hospital.
- (d) An allegation that the deceased received penicillin when he was allergic to this drug.
- (e) An allegation that the deceased was discovered in a diabetic coma on 28th December 2011 and that the attending Nurse did not have access to the relevant medication as it was locked in the surgery. A further cause of concern was that the Nurse gave sweetened tea to the deceased.
- (f) An allegation that the deceased had extensive bruising following restraint after an episode.

Refusal of temporary release

3.4 The deceased's wife raised the issue of the refusal by the prison authorities to grant her husband temporary release on medical grounds. As I address this issue in detail in Chapter 7, in my Findings in Chapter 8 and in my Recommendations in Chapter 9 it is not necessary, in this part of this Report, to set out the deceased's wife's causes of concern.

Chapter 4

Addressing the concerns of the next of kin

Contact with the Irish Prison Service

- 4.1 The issues outlined in paragraph 3.2 are raised as important and relevant issues that I should investigate.
- 4.2 I have carefully considered each issue and have concluded that the results of a comprehensive investigation of each issue would not inform my core investigation as these are, in the main, operational issues which could not be said to impact on my investigation into the death of the deceased as explained in Chapter 1.
- 4.3 One or a number of issues may fall to be resolved under the complaints procedure being operated by the Irish Prison Service although due to the efflux of time this may prove difficult.

Care afforded to the deceased by hospitals

- 4.4 The issues raised in paragraph 3.3, again while obviously important and distressing to the deceased's wife, are not relevant to my investigation. Despite these issues not being relevant I feel it incumbent on me to comment briefly on each of the issues raised. I will adopt the same numbering sequence as in paragraph 3.3 as follows:-
- (a) The letter from the Consultant in the Limerick Regional Hospital makes no mention of the need for early treatment.
 - (b) I cannot give an objective opinion as this is clearly a matter between the hospital and the deceased's wife.
 - (c) The medical notes indicate a level of transfer of information between the four hospitals mentioned. A referral letter from Limerick Regional Hospital to Tallaght Hospital is included in the medical file. Portlaoise General Hospital's involvement related to ongoing acute medical care while the deceased's

specialists' care continued to be provided at Tallaght Hospital. Portlaoise General Hospital was clearly aware of the full range of medical issues. There is evidence that the Prison GP, in addition to providing care generally, acted as liaison between the different specialists when they became involved.

- (d) The medical files clearly indicate the deceased's allergy to penicillin. Penicillin was prescribed in error. However, before it was dispensed the error was discovered. The prescription was cancelled and another antibiotic was prescribed and administered. Clear records exist to support this statement.
- (e) At interview both the nurse and the nurse manager confirmed that the relevant medication is always in the bag which the nurse brings on her visits to cells and is always and was available at the time in question. Where a person has low blood sugar levels sweetened tea is often used in addition to medication to assist in raising a person's blood sugar levels.
- (f) There is no reference in the comprehensive medical notes of a restraint being used nor is there a mention of bruising consistent with a restraint. There is no requirement to restrain a patient during or following an episode.

Refusal of temporary release

4.5 I address this issue in Chapters 7, 8 and 9.

Chapter 5

Relevant Prison Rules

- 5.1 In order to address the issue of the alleged failure to release the deceased on temporary release it is necessary, at this juncture, to set out the obligations of prisons in this regard.
- 5.2 The Irish Prison Rules 2007 set out, *inter alia*, the duties of governor's, prison officers and healthcare staff. The following rules are relevant to my investigation:-

Rule 83(1) *The Governor shall inform the Minister in writing of any activity, occurrence or matter relating to the prison or its operation that he or she considers –*

- (a) to be of particular importance, and*
- (b) should be brought to the attention of the Minister.*

Rule 83(4) *If the prison doctor or a psychiatrist advised the Governor that he or she is of the opinion that –*

- (a) the life of a prisoner will be endangered by continued imprisonment,*
- (b) a prisoner is unlikely to live until the expiration of the period of his or her sentence,*
- (c) a prisoner is unfit for the prison regime, or*
- (d) the mental or physical state of any prisoner is being significantly impaired by his or her continued imprisonment,*

The Governor shall so inform the Minister as soon as may be after being so advised.

Rule 100(1) *A healthcare professional shall, in the performance of his or her functions-*

(h) where he or she becomes aware of an aspect of the prison environment or regime that he or she considers to be particularly detrimental to the physical or mental health of any prisoner or other person, draw it to the attention of the Governor as soon as may be after his or her becoming so aware.

Rule 103(1) *Where a prison doctor believes there is a serious risk to the health of a prisoner and makes a recommendation in writing on medical grounds in relation to that prisoner to the Governor, the Governor shall, subject to paragraph (2), implement the recommendation as soon as may be thereafter.*

(2) *Subject to any direction of the Director General under paragraph (4), the Governor may, for the purpose of maintaining good order and safe and secure custody or on other reasonable grounds, decide not to implement a recommendation under this Rule (other than a recommendation that a prisoner, who is suffering from, or suspected of suffering from, a contagious or infectious disease or condition that threatens the health or well being of others, be segregated in order to prevent the spread of the disease or condition) after –*

- (a) discussing the matter with the prison doctor, and*
- (b) taking account of the likely impact of not implementing the recommendation on the prisoner.*

(3) *The Governor shall, as soon as may be after deciding not to implement a recommendation under this Rule, notify the Director General in writing of the prison doctor's recommendation, his or her decision not to implement the decision and the grounds for that decision, and any other issues or views the Governor considers relevant to the matter.*

- (4) *Upon receiving a notification under paragraph (3), the Director General may, after considering –*
- (a) the recommendation concerned,*
 - (b) the decision not to implement the recommendation,*
 - (c) the reasons for that decision, and*
 - (d) any other issues or views set out in the notification,*
- by direction in writing direct the Governor to implement the recommendation concerned either with or without modifications or affirm the refusal of the Governor to implement the recommendation. The Governor shall notify the prison doctor of the Director General's direction.*

Rule 104 *A prison doctor shall draw the attention of the Governor to any particular aspect of the prison environment or regime which the prison doctor reasonably considers particularly detrimental to the physical or mental health of any individual prisoner or group of prisoners, any prison officer, or other person working in the prison, or visitors to the prison, as soon as may be after he or she becomes aware of the matter.*

Rule 105 *A prison doctor shall, after consulting with such other healthcare professionals as he or she considers appropriate, inform the Governor in writing if he or she is of the opinion that –*

- (a) the life of a prisoner will be endangered by continued imprisonment,*
- (b) a prisoner is unlikely to live until the expiration of the period of his or her sentence,*
- (c) a prisoner is unfit for continued imprisonment or for that particular prison's regime,*
- (d) the mental or physical state of any prisoner is being significantly impaired by his or her continued imprisonment, or*

(e) a prisoner is unfit to travel outside the prison, including attendance at any court, and shall make a record in writing of the prisoner's name, the information given to the Governor under this Rule and the time on which he or she so informed the Governor.

5.3 On 10th May 2012, I asked that I be provided with relevant documentation, if such existed, detailing the Irish Prison Service Policy for the temporary release of prisoners on the grounds of ill health.

5.4 The Operations Directorate of the Irish Prison Service forwarded such guidelines which read as follows:-

“(a) There are 2 separate instances in which temporary release on medical grounds may be considered. The first is where a person is certified as unfit for imprisonment by a prison doctor and the second is when a person is an in-patient in a hospital and is not regarded as a flight risk, therefore there may be no need for a prison escort to remain on him/her.

(b) Prisons are not hospitals and there may arise prisoner cases who are unfit for imprisonment because of the constant need for medical attention and who as a result of being incapacitated because of their illness are not manageable under the normal prison regime. Prisoners who, in the view of the prison doctor, require treatment which can not be administered in the prison system will be facilitated with hospital appointments. On some occasions they will be required to remain in hospital.

(c) It is the responsibility of the prison doctor to raise such case with Operations Directorate providing detailed medical information as to why the person is, in the view of the Doctor, unfit for imprisonment and setting out the likely future

prognosis in the case. The Governor of the Institution may also be afforded the opportunity to offer his observations at this stage. In cases where a person is an in-patient there are obvious financial considerations associated with having prison officers on guard on a 24 hour basis. In such instances the prison Governor may make an application to grant temporary release to the prisoner concerned for the duration of his hospital stay.

- (d) In either case, once reports are received from the Prison Doctor and Governor, a memo should be prepared in this office for the attention of the Director of Healthcare Services seeking his / her observations on the matter from a medical perspective.*

- (e) On receipt of the above advice a submission should be prepared for senior management setting out all relevant information such as offence details, length of sentence served and left to serve, Garda information, view of prison doctor and Director of Healthcare and a recommendation on same. In most cases the final decision on release on the grounds of being unfit for imprisonment will be made personally by the Minister. In many cases, the Minister will also make the call whether to remove a prison escort on a prisoner. In general, our more elderly prisoners are those more likely to suffer from ill health and a large percentage of these prisoners are serving sentences for high profile sex offences. As such the submission should be forwarded to the Minister's office with all relevant background material and the views of senior management. The final decision maker will of course have regard to all relevant matters including the conflicting factors such as safety to the public and financial constraints.*

- (f) In general, persons are rarely released on the grounds of being unfit for imprisonment and only in cases where they are at an*

advanced stage of a terminal illness and present little or no threat to the public.

- (g) *Once the decision is returned to this office the Governor should be informed and the decision should be recorded on the PIMS system and the prisoner's file”.*

Chapter 6

Deceased's Medical Condition

- 6.1 Prior to his trial which led to his conviction on 15th October 2010 the deceased suffered from a variety of medical conditions which necessitated specialist treatment both in hospital and in the community.
- 6.2 The issue of his ill health prompted submissions at his trial. The learned Trial Judge required expert evidence on his medical condition and the facilities in prison should a custodial sentence be imposed.
- 6.3 At his trial the deceased's medical history was raised as an issue. Evidence was given on behalf of the Nursing Services of the Irish Prison Service in the following terms:-
- “.....I suppose really what we'd be saying is that if (the deceased) is suitable for care at home then we can deliver that level of care within the Irish Prison Service in the Midlands Prison.”*
- 6.4 During the course of his incarceration the deceased had virtually daily contact with the prisons' healthcare teams. On numerous days he saw medical personnel on a number of occasions.
- 6.5 From the date of his transfer to the Midlands Prison (11th August 2011) to the date of his death (30th January 2012) the deceased was attended to by Nurse Officers on approximately 485 occasions. He was seen by the Prison Doctor on approximately 50 occasions and was transferred to hospital on 8 occasions.
- 6.6 The deceased was of frail stature and wheelchair bound. I should point out that his wheelchair could not pass through the cell door in the Midlands Prison.

- 6.7 From my perusal of the medical notes it is clear that many of the interventions by Nurse Officers were for the purpose of administering medication. However, it is also clear from the medical notes that the deceased required constant assistance more appropriate to medical assistance given in hospitals or permanent care facilities.
- 6.8 It is also clear from the medical notes that the deceased required oxygen and was taking a variety of prescribed medications.
- 6.9 In the month of his death the deceased was referred to hospital on 3 separate occasions.

FOLLOWING PARAGRAPH REDACTED

6.10

Chapter 7

Deceased's Status in Prison and other relevant facts

- 7.1 In this Chapter I set out relevant facts relating to the deceased's status in prison, the care taken of him, the deficiencies in the ability of the prisons to provide appropriate care, the actions of doctors and prison management and the circumstances surrounding the failure to grant the deceased temporary release.
- 7.2 In setting out the facts in this Chapter I had unrestricted access to all relevant files and to relevant personnel. All parties co-operated fully with my investigation.
- 7.3 The major issue that I address in this Chapter is the fact that the deceased was not granted temporary release on health grounds. In order to address this issue I set out in paragraphs 7.4 to 7.32 relevant facts that, taken together, gives an accurate account of the deceased's time in prison. These facts inform my findings as set out in Chapter 8 and my recommendations as set out in Chapter 9.
- 7.4 It must be appreciated that the deceased was an elderly, frail man of 82 years who suffered from multiple serious medical conditions. It must also be appreciated that prior to his imprisonment on 15th October 2010 he had no previous convictions.
- 7.5 The deceased was a special observation prisoner.
- 7.6 If at any stage during his imprisonment the deceased was to be considered for temporary release the Governor of the prison, in view of the nature of his offence, would be obliged to give notice of such release to An Garda Síochána 10 days in advance of such release giving them, *inter alia*, the address at which the deceased would reside.

7.7 On 19th October 2010 Doctor A of Wheatfield Prison wrote to the Governor of Wheatfield Prison – Governor A raising concerns about the deceased in the following terms:-

“This is an 81 year old man who is taking O2 therapy for up to 12 hours in everyday. He is wheelchair bound and as such his mobility is severely impeded. One of his conditions dictates that he is up frequently at night. He is prone to falling due to low blood pressure. I have concerns about how safe his environment is.

He presents with multiple medical problems. (The doctor outlines the medical problems).

He presents as a frail sick man who needs constant medical attention and supervision that I feel that cannot be provided adequately within the prison setting.

Based on his medical condition, how he presents and having consulted with his own GP I would strongly recommend that this man be considered for temporary release.”

7.8 On 19th October 2010 Governor A forwarded the letter from Doctor A (referred to in paragraph 7.7) to the Operations Directorate of the Irish Prison Service for consideration.

7.9 Doctor A again wrote to the Governor of Wheatfield Prison – Governor A on 15th December 2010 in similar terms.

7.10 On 11th January 2012 Doctor B from the Midlands Prison wrote to Governor B in the Midlands Prison expressing his concerns for the deceased. Having outlined the deceased’s multiple medical illnesses and his medications he goes on to say –

“His health continues to deteriorate and required multiple admissions in the hospitals as the record confirms. His multiple medical illnesses require intensive medical and nursing care and demands physical assistance in terms of his mobility, personal hygiene and supervision of his medications. At present he remains in hospital.

Considering his age, medical illnesses, rapid unpredictable course of his ill health and poor prognosis, release date in April, I recommend that he should be considered for release from the prison on health grounds as the confined and the close environment of the cell will further deteriorate his health.”

7.11 On 12th January 2012 the Operations Directorate prepared a submission for the Director General. This was a comprehensive submission which included, *inter alia*, information on details of the offence committed by the deceased, a review of the relevant Act under which the deceased was convicted, the then current Garda view, the deceased’s then current medical condition which included copies of letters from prison doctors, possible options for the deceased, the personal recommendations of the author of the submission and formal recommendations.

7.12 The author of the submission referred to the Garda view. This view was to the effect that the Gardaí had nothing positive to say about the deceased. They stated that there was still a risk that he posed a threat and would not recommend him for temporary release. This view was expressed despite the poor health of the deceased having been explained to members of An Garda Síochána. The author of the submission in referring to the Garda view stated –

“While Gardaí say that (the deceased) continues to pose a risk to I do not believe that such a threat could exist, given his age, disability and medical state.”

The author also drew attention to the fact that the deceased had only 13 weeks of his sentence left to serve. The recommendations attached to the submission read as follows:-

1. *“Approve (the deceased’s) temporary release from today for duration of hospital stay.”*
2. *“Approve (the deceased) reviewable temporary release to the care of his wife/hospital from 23rd January 2012 (ten days from now) on grave humanitarian grounds. This approval will allow the Governor the necessary time to make arrangements in order to fulfil the obligations he has under (a named Act).”*

7.13 The submission referred to in paragraph 7.11 was referred by the Director General to the Secretary General of the Department for consideration by the Secretary General and possibly by the Minister. This procedure accorded with the Guidelines of the Operations Directorate referred to in paragraph 5.4(e).

7.14 At this juncture I wish to refer to the input of the Department into the granting of temporary release and the considerations which could influence decisions for the granting of temporary release to prisoners convicted of the type of offence for which the deceased was convicted.

7.15 In general, temporary release was managed by the Operations Directorate of the Irish Prison Service on behalf of the Minister. However, in a small number of high profile/complex cases the Department oversaw the granting of temporary release on behalf of the Minister. The instant case was a case in point. This practice was obviously contemplated in the Guidelines referred to in paragraph 5.4(e).

7.16 In relation to prisoners convicted of crimes such as in the instant case, while there was no specific documented policy in relation to the granting of temporary release, the reality was that it was the unwritten policy of the

Department and the long standing practice that such offenders would not be released early.

- 7.17 The submission/application referred to in paragraph 7.11 was refused in the following terms by the Director General:-

“Given the circumstances of this case and in particular the Garda view my decision is that I would approve recommendation number 1, i.e. approve (deceased) for temporary release from today for the duration of his hospital stay only. Should (deceased) be discharged from hospital he must return to prison.

We should also work up the possibility of (deceased) going on an electronic tag to the care of his wife and in that context you might put a proposal to me.

I may need to discuss this with the Secretary General and/or the Minister”.

- 7.18 During the month of January 2012 the deceased was admitted to Portlaoise General Hospital on three occasions, namely, 9th January, 20th January and 26th January. On each occasion a referral letter from the Prison Doctor was addressed to the Chief Medical Officer. From a perusal of copies of these letters it is clear that the deceased’s medical condition was deteriorating rapidly.

- 7.19 Due to the deterioration of the deceased’s physical condition a visit from a member of the Operations Directorate of the Irish Prison Service was arranged in order for the Directorate to assess the deceased’s situation. On Thursday 19th January 2012 the representative went to the visiting area where the deceased was having a visit from his wife. The Operations Directorate representative noted that the deceased was confined to his wheelchair, was barely audible in his speech and in the opinion of the representative was

clearly distressed and frail. This representative expressed grave concerns about the deceased's condition.

7.20 On 20th January a comprehensive submission was generated outlining the concerns of the representative of the Operations Directorate subsequent to that person's observations of the deceased on 19th January. It is clear from this submission that the deceased's condition had further deteriorated. This submission was forwarded to the Director General of the Irish Prison Service, the Director of Operations and the Private Secretary to the Minister.

7.21 The submission referred to in paragraph 7.20 again referred to the issues already referred to in paragraph 7.11.

7.22 The submission referred to in paragraph 7.20 contained the following recommendations:-

1. *“Continue to manage (deceased) in a prison to hospital and hospital to prison setting which according to the prison GP is adding to the further deterioration of the health of (deceased).*
2. *Approve (deceased) reviewable temporary release with an electronic tag to the care of his wife/hospital on grave humanitarian grounds under the supervision of the Probation Service in the community.*
3. *Approve (deceased) reviewable temporary release to the care of his wife/hospital on grave humanitarian grounds under the supervision of the Probation Service in the community.”*

7.23 On 20th January Governor C (Midlands Prison) emailed the Operations Directorate of the Irish Prison Service on two occasions in the following terms:-

- *“As you are aware (the deceased) has been discharged to PGH this afternoon for medical treatment. (Doctor B) has expressed grave concern to me regarding this man's health. Can you approve this man*

for temporary release for the duration of his hospital stay” (Email 20/01/2012 12:33)

- *“As you will have witnessed from your encounter with (the deceased) yesterday he is an extremely frail man. His physical appearance has deteriorated significantly over the last two months or so. He is confined to either a chair in his cell or a wheelchair at all times. His wheelchair is located outside his cell at all times as it will not fit in because the hospital bed obstructs the passage into the cell. He was until recently able to manoeuvre himself from his bed to his bedside chair and onto the toilet. However he now requires assistance to make it to the toilet. He is assisted by another prisoner for most of the day. He is just about able to wheel himself around but even this task has become more difficult. His meals are collected for him by another prisoner. There have been reports of him falling from the toilet and from the chair in his cell. In circumstances like this he would most definitely be unable to haul himself back to bed/chair. Despite the best efforts of our medical team and all the staff and prisoners on A1, I have grave concerns for this man’s health.” (Email 20/01/2012 13:37)*

- 7.24 On 23rd January 2012 a meeting took place between the Minister, the Secretary General of the Department and the Director General of the Irish Prison Service. The case of the deceased was discussed. No final decision was made as to whether the deceased was to be granted temporary release on health grounds. The Director General was informed that the case required further consideration.
- 7.25 The Irish Prison Service representative again visited the deceased on 25th January 2012 where he was observed in his cell. This representative noted that the deceased appeared extremely unwell and was propped up in his bed on a number of pillows.
- 7.26 On the morning of 26th January 2012 the deceased, following his assessment by the Prison Doctor – Doctor B who was concerned at his deteriorating

condition, was again referred to the Midlands Regional Hospital. He was admitted overnight.

7.27 On 26th January Doctor. B again wrote to Governor B in the following terms:-

“Further to my letter dated 11 January 2012, that this man’s general health has deteriorated further, he suffers from the following serious medical conditions, with prognosis remains extremely very poor. In my professional opinion, the prison settings are not equipped to cater his needs. Prison healthcare works on the model of primary healthcare settings (GP service), not at the level of hospital or nursing home care. He is also wheelchair bound, on Oxygen, requires full physical assistance of two nursing staff members, in his day to day activities, medications and personal needs.

As he suffers from the following serious illnesses with very poor prognosis, he should be released on medical grounds. (The doctor then outlines the deceased’s medical condition).

This case demands an urgent consideration as his prognosis is extremely poor”.

7.28 Doctor. B had the express permission of the deceased to disclose his (the deceased’s medical history) to Governor B.

7.29 The deceased was discharged back to the Prison on 27th January.

7.30 During the night of 29th/30th January 2012 the deceased was attended to on 6 occasions by the nursing staff in the prison.

7.31 At 7.10am on the morning of 30th January the deceased was unresponsive when the nurse officer entered his cell. An Ambulance was called immediately and arrived at 7.26am. The deceased was pronounced dead at approximately 8.00am.

7.32 A significant feature in this investigation is that the Director General of the Irish Prison Service had only taken up his position on 5th December 2011. Prior to his appointment he had no direct involvement with the Irish Prison System.

Chapter 8

Findings

- 8.1 At the outset I wish to point out that this report relates to one man. It does not refer to a cohort of prisoners who have been imprisoned for a particular type of crime. When I deal with the failure to release this man I am only referring to one person who was old, frail and suffered from multiple serious medical conditions.
- 8.2 The cause of death of the deceased is a matter for the coroner. However, from my investigation I am of the view that the regimes in the Midlands Prison and elsewhere in the prison system did not cause the death of the deceased.
- 8.3 At the sentencing hearing the learned Trial Judge was in possession of all facts relating to the deceased's multiple medical conditions.
- 8.4 When first admitted to prison the prison authorities including the healthcare personnel were adequate to the needs of the deceased.
- 8.5 The deceased suffered from multiple serious medical conditions as outlined in this Report.
- 8.6 His medical conditions gave rise for concern from 19th October 2010 – see paragraph 7.7.
- 8.7 During his imprisonment the deceased was admitted to hospital on numerous occasions.
- 8.8 Since his transfer to the Midlands Prison on 11th August 2011 the deceased's health deteriorated significantly.
- 8.9 In the six months prior to his death the deceased was admitted to hospital on 6 occasions.

- 8.10 There was a significant further deterioration in the deceased's health in January 2012.
- 8.11 The healthcare staff within the prisons provided a good level of care despite the inappropriateness of the setting in which care had to be delivered.
- 8.12 It was inhumane that other prisoners should have had to assist the deceased in dealing with his personal hygiene issues.
- 8.13 The Governor and Prison Officers delivered a reasonable level of care despite the difficult physical conditions and the complex healthcare needs of the deceased.
- 8.14 The conditions in which the deceased was detained in the Midlands Prison in the weeks prior to his death could only be described as unsuitable where the dignity of the deceased was compromised.
- 8.15 Prison Doctors had, on four occasions, brought their concerns to the attention of appropriate prison governors in accordance with Rule 105 of the Irish Prison Rules 2007.
- 8.16 The Governor in the Midlands Prison, being aware of the deceased's deteriorating condition, contacted the Irish Prison Service and made his concerns known.
- 8.17 The management of the Irish Prison Service were aware of the medical difficulties being experienced by the deceased and of the fact that his health was deteriorating.
- 8.18 Being aware of the grave situation referred to in paragraph 8.17 the Operations Directorate prepared two submissions for the Director General who acted as a conduit in passing these to higher authorities.

- 8.19 The deceased would have qualified for temporary release under the Operations Directorate Guidelines for Approving Temporary Release on grounds of ill health referred to in paragraph 5.4.
- 8.20 The refusal of temporary release by the Director General reflected the unwritten policy of the Department and the long standing practice that offenders such as the deceased would not be released early. I find corroboration for this finding in the Guidelines referred to in paragraph 5.4(e). Therefore, the refusal of temporary release, while directed by the Director General, was in reality a decision not of his making.
- 8.21 The Director General did not have the power to release the deceased as cases, such as the instant case, had to be referred to the Department for a final decision. In reality the imprisonment of the deceased was being micro managed by the Department instead of by the professionals on the ground.
- 8.22 In this particular case the decision makers in the Irish Prison Service were paralysed by convention. In this particular case the decision making responsibility should have rested with the Director General and he should have made the decision.
- 8.23 The deceased was, for some time prior to his death, unfit for imprisonment, was in the advanced stage of a terminal illness and presented no threat to the public.
- 8.24 The deceased should not have died in prison. He should have been released on temporary release having regard to his medical condition, his infirmity, the inadequacy of the prison environment in which to deal with his problems and his total inability to attend to almost all of his basic needs.
- 8.25 It is difficult to say, with certainty, when the deceased should have been released. All that can be said is that concerns for his wellbeing were being voiced shortly after his imprisonment. **However, it is clear that certainly in January when the doctors, the management of the prison and the senior**

management of the Irish Prison Service were all voicing very serious concerns, the deceased should have been released.

8.26 There was no evidence available to me of a care plan having been discussed in any hospital prior to the deceased being returned to prison and especially in the month of January 2012.

8.27 There could be no foundation whatsoever for the Garda view that the deceased presented a risk if released. My investigation is a non statutory enquiry and as such I had no power to investigate this particular aspect further. I refer to this particularly worrying issue in Recommendation 8.

8.28 **Despite the concerns for the wellbeing of the deceased expressed by doctors, the management of the Midlands Prison and the Irish Prison Service the considerations which dictated the deceased's continued imprisonment had little or nothing to do with his health conditions.**

Chapter 9

Recommendations

1. Decisions to grant temporary release on health grounds should be based on the particular circumstances of each case and not be influenced by policy made by others. In the balance of competing interests policy must take second place to the health needs of prisoners.
2. Those charged with making decisions for the temporary release of prisoners on health grounds must be made aware of all relevant medical factors which could influence such decisions. The balancing of competing interests such as medical confidentiality must be weighed against the interests of the prisoner under review.
3. Decisions to release prisoners, such as in the instant case, on grounds of severe ill health and/or where such prisoners are nearing death should be made by the Director General having taken advice from all appropriate professionals such as doctors, healthcare staff and the senior management of the prison. It may be necessary to change primary or secondary legislation to give effect to this recommendation. Further legislative changes may also be necessary.
4. It must be recognised that prisons in this Country do not have hospital wings. Therefore, prisoners with significant medical problems, as in the instant case, whose care cannot be adequately catered for by the medical professionals in prison, should not remain in prison.
5. All future designs of prisons must include an appropriate number of cells capable of accommodating wheelchairs, hospital type beds and relevant paraphernalia necessary to the needs of prisoners with healthcare requirements.
6. When it is apparent that a prisoner is reaching his/her end of life and is suffering from medical complications, such as in the instant case, a case

conference involving a palliative care team should be convened to formulate a care plan.

7. Where prisoners, who are in the advanced stage of terminal illness, are to be transferred back from hospital to prison after treatment a care plan must be formulated in the hospital prior to transfer of such prisoners. This care plan should mirror that which is prepared for a terminally ill person in the community and should involve, *inter alia*, palliative care professionals. The Prison Service must have due regard to any such care plan. However, this regard must be tempered by any **real** viable threat that the release of the prisoner might pose or other such matters.
8. In paragraph 8.27, I make a finding that there could be no foundation whatsoever for the Garda view that the deceased presented a risk if released. This is a serious finding. The Minister should consider, in the public interest, whether she should refer this Report to an appropriate body charged with oversight of An Garda Síochána in order to establish if an investigation into this alleged assertion should be undertaken.
9. A protocol should be agreed between the Irish Prison Service and An Garda Síochána under which Garda views on the proposed release of prisoners on temporary release are presented in a structured format and authorised by a senior officer rather than the *ad hoc* arrangements that exist at present.
10. The guidelines referred to in paragraph 5.4 must be revisited in the light of this Report.